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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 24, 2013

VIA ELECTRONIC TRANSMISSION

Mr. John McCarthy
Medicaid Director
Office of Ohio Health Plans
Ohio Department of Job and Family Services
30 East Broad Street, 32 Floor
Columbus, OH 43215

Dear Mr. John McCarthy:

When our government allows doctors who have been criminally convicted for problem prescribing practices and even terminated under state Medicaid programs to provide services under Medicare,³⁵¹ it exposes the elderly and chronically ill to potentially unsafe medical treatment and wastes millions of tax payer dollars on fraudulent, abusive, and unreliable providers.

Medicare is the largest federal healthcare program in the country, providing benefits to more than 40 million Americans and carrying a price tag of over \$550 billion.³⁵² Over 4,000 hospitals and 600,000 individuals provide health care services to Medicare enrollees.³⁵³ Many of these providers also deliver services under State Medicaid programs.

By statute, Medicare must terminate any individual physician or entity from its rolls if that provider was terminated under any State's Medicaid program.³⁵⁴ However, the requirement to terminate only applies if the provider, supplier, or individual was terminated or had their billing privileges revoked "for cause."³⁵⁵ Accordingly, any

³⁵¹ Tracy Weber, Charles Ornstein & Jennifer LaFleur, "Medicare Drug Program Fails to Monitor Prescribers, Putting Seniors and Disabled at Risk," ProPublica (May 11, 2013), <http://www.propublica.org/article/part-d-prescriber-checkup-mainbar>.

³⁵² Ctr. for Medicare & Medicaid Serv., *National Health Expenditures Fact Sheet 3*, 22 (2012), available at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet.html>.

³⁵³ <http://www.gao.gov/products/GAO-12-778R>.

³⁵⁴ See Patient Protection and Affordable Care Act § 6501, 42 U.S.C. 1396a(a)(39).

³⁵⁵ DEP'T OF HEALTH & HUM. SERV., CTR. FOR MEDICARE & MEDICAID SERV., CPI-CMCS INFO. BULL. 12-02, AFFORDABLE CARE ACT PROGRAM INTEGRITY PROVISIONS – GUIDANCE TO STATES – SECTION 6501 – TERMINATION OF PROVIDER PARTICIPATION UNDER MEDICAID IF TERMINATED UNDER MEDICARE OR OTHER STATE PLAN (2012)..

Medicaid provider terminated “without cause” will not be mandatorily removed from Medicare.

States have broad discretion in terminating providers and may do so both for and without cause. Unfortunately, this flexibility means that States may bar doctors from State Medicaid programs and state medical boards may even censure providers because of fraudulent activity without reporting that the action was taken “for cause.” As a result, a “without cause” termination enables duplicitous and untrustworthy providers to continue to draw from Medicare, wasting tax dollars and putting patients at risk.

For example, one Florida physician wrote more than 96,000 prescriptions under state Medicaid over the course of twenty-one months. Yet he remains able to prescribe under Medicare even though he was expelled from state Medicaid, because his expulsion was *without cause*.³⁵⁶

Florida Medicaid also terminated a Miami-based psychologist *without cause* for prescribing powerful sedatives and antipsychotics against the Food and Drug Administration’s black box warnings.³⁵⁷ He now prescribes the same sedatives and antipsychotics under Medicare.³⁵⁸

One Chicago psychiatrist wrote an average of 20,000 prescriptions for clozapine each year between 2007 and 2009, most of them for off-label purposes.³⁵⁹ He was *suspended* from Illinois Medicaid and has a Department of Justice suit pending against him, yet he remains able to provide services under Medicare.³⁶⁰

States’ current practice of without cause termination from Medicaid may speed their ability to protect Medicaid patients, but it can expose Medicare recipients to potentially unsafe medical treatment and keeps tax dollars flowing to unworthy providers. To better understand your state’s termination process, please provide answers to the following questions by July 15, 2013:

1. Please provide your definition of both (i) for cause and (ii) without cause termination.
2. Please provide any factors you consider when determining without cause provider termination over for cause, including how much notice you give the provider.

³⁵⁶ *Id.* Termination was “in the best interest of the Medicaid program.” Letter from D. Kenneth Yon to Roberta K. Bradford (Apr. 20, 2010), available at <http://www.propublica.org/documents/item/699705-fernando-mendez-villamil-medicaid.html>.

³⁵⁷ *Id.*

³⁵⁸ *Id.* See Letter from Tim Bynes to Tom Arnold (Aug. 31, 2005), pg.1, available at <http://www.propublica.org/documents/item/698584-enrique-casuso.html>.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

3. Is termination from Medicare a factor in your termination considerations?
4. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated for cause, as well as the allegations against and detailed reasoning for their termination.
5. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated without cause, as well as the allegations against and detailed reasoning for their termination. Please exclude those physicians who were terminated without cause due to inactivity within the program.
6. Does the Medicaid program reimburse for prescriptions that are issued by a provider that has been terminated?
7. Once you have terminated a provider from Medicaid, do you notify the Centers for Medicare and Medicaid Services (“CMS”)?
 - a. If yes:
 - i. Please list the last five (5) providers, including Medicare provider numbers, you have transmitted to CMS.
 - ii. How many providers has CMS terminated from Medicare due to your notifications? Please list each of these providers, including their Medicare provider number.
 - iii. Please describe the manner in which you notify CMS.
 - iv. What information do you include in your notification?
 - b. If not, why not?

Thank you in advance for your cooperation and prompt attention to this matter. When responding to this letter, please number your answers in accordance with our questions. I would appreciate a response by July 15, 2013. If you have any questions, please do not hesitate to contact Erika Long of my staff at (202) 224-0675.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary